1987

The state of Utah v. Russell E. Root and Randy A. Root : Brief of Appellant

Utah Court of Appeals

Donald J. Eyre; attorney for respondent.
Milton T. Harmon; attorney for appellant.

DOCKET NO. 870142

IN THE COURT OF APPEALS IN AND FOR

THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff and Respondent,	:	Case No. 870142-CA
-vs-	:	#2
RUSSELL E. ROOT,	:	BRIEF ON APPEAL
Defendant and Appellant.	:	

Appeal from the Judgement of the Eighth Circuit Court in and for Juab County, State of Utah, the Honorable Joseph I. Dimmick, Circuit Court Judge.

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SECTIONS CITED

ARGUMENT PRIORITY CLASSIFICATION

Priority classification is priority number two.

JURISDICTION OF THE COURT OF APPEALS

Jurisdictional authority is conferred upon the Utah Court of Appeals pursuant to Section 78-2a-3(2)(c) Utah Code Annotated 1953 as amended.

STATEMENT OF ISSUES PRESENTED ON APPEAL

ISSUE ONE: The Trial Court erred in considering hearsay evidence.

ISSUE TWO: The Trial Court erred in interpreting and applying the Utah Fish and Game violation law, and finding guilt where no mens rea was present.

STATEMENT OF THE CASE

The Defendant was charged with violation of U.C.A., 1953, as amended, Section 23-20-4, possession of illegally taking protected wildlife. Trial was held before the Court, without a jury, and the Defendant was convicted of the charge, and thereafter sentenced.

STATEMENT OF FACTS

On October 28th, 1986, the Defendant was contacted by Law Enforcement Officers, including Juab County Deputy Sheriff, LuWayne Walker. The Defendant and his brother were then riding in a pickup truck, and in the bed of the truck was a doe deer, which had its throat

cut, and had been shot through the neck with a large caliber rifle. The Defendant and his brother each had Utah deer hunting licenses, it was the hunting season, however, the doe deer was a protected wildlife, and taking was not authorized by the hunting license possessed by the Defendant.

Deputy Walker testified that he was investigating a possible wildlife violation. A lady had called the Juab County Sheriff's Office earlier in the day, indicating that two men driving a pickup truck had shot a doe deer. (T-4)

The Officer testified that early in the evening, as he was waiting at the bottom of a mountain road, in the area where the Defendant was contacted, that he looked toward the mountains, and could see the lights of a vehicle coming down the mountain. That these lights were shut off at least one as he observed the vehicles descent. (T-12)

In addition to finding the doe deer in the back of the truck in which Defendant was riding, there was also found a knife with blood on it, and a coat with blood on it. There was no indication that this was fresh blood however. And no gun, of any caliber, was found in

the truck. (T-6)

As the Defendant was contacted by the Officers he advised them that as he was coming down the mountain, saw the doe deer laying to the side of the road. Stopped the truck, inspected the deer, saw that it had been shot and was dead, and determined to take the deer to town and deliver it to the appropriate Officers for disposition. (T-16, T-32) The deer was loaded into the truck, and the Defendant proceeded to the area where he saw the Officers, stopped his truck and proceeded to contact the Officers for disposition of the deer.

At Trial, Defendants' mother testified that she recognized the knife and coat found in her sons possession by the Officers. That the coat was hers, the knife was her husbands, that she and her husband had been hunting deer a few days prior to her sons arrest, that they had shot a deer and cut its throat, had cleaned the deer, and that is how the blood was placed upon these items. (T-26)

In finding the Defendants guilt, the Judge indicated that he need not consider the hearsay evidence regarding the report of the lady to the Officers that she had seen two men shoot a doe deer

earlier in the day. But that mere possession of the deer, inspite of Defendant's explanation, was sufficient for conviction. (T-38) And conviction was had without any proof Defendant shot the deer or illegally took the deer, but merely that he was in possession.

SUMMARY OF ARGUMENT

I. The Trial Judge has improperly considered hearsay evidence in arriving at his decision that the Defendant was guilty.

II. Mens rea is an element of the crime of possession of illegally taken protected wildlife, and must be proven prior to a finding of guilty can be entered.

ARGUMENT

In finding the Defendant guilty, without any showing of illegal taking of the deer, or any guilty intent, the Judge has had to rely upon some proof. There was the possession of the deer, but Defendant gave a reasonable explanation of that possession, which explanation was consistent with the existing circumstances, i.e., no gun, only a knife with dried blood upon it, vehicle seen stopping by the side of the

road in the area where the deer was found. Consequently one is lead to believe that the Trial Judge did consider the hearsay testimony of a telephone incident report to the County Sheriff.

Of course the Court explained that mere possession was sufficient for conviction, and no proof of illegal taking was necessary. But here, the Court erred. The law says that the possession must be of illegally taken wildlife. Section 23-20-4, U.C.A., 1953, as amended, is clear on this point. And the illegal taking must be interpreted in light of the requirements of criminal responsibility contained in Section 76-2-101, U.C.A., 1953, as amended, specifying the need of showing the required guilty mind prior to the finding of guilt.

Perhaps this is a policy issue. That is, imposing the requirement that a guilty mental state must be found prior to conviction of the crime here charged, rather than relying on mere possession. But policy is in favor of such a requirement. The State relys on the good conduct and cooperation of its citizens in enforcing its laws, and without such cooperation law enforcement would be next to impossible. To hold a person guilty of the offense charged, when that person

is in the act of assisting law enforcement, as the Defendant in this case who is bringing in a deer found to the side of the road, contradicts not only sound principles of law, but sound reason in having citizen participation in law enforcement.

CONCLUSION

The conviction of the Defendant should be vacated.

Respectfully submitted this 30 day of July, 1987.

MILTON T. HARMON
Attorney for Defendant-Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed true and correct copies of the foregoing Brief on Appeal to: Mr. Donald J. Eyre, Jr., Juab County Attorney, 125 North Main Street, Nephi, UT, 84648, and to Attorney General, 236 State Capitol, Salt Lake City, UT, 84114; first class, postage paid, this 30 day of July, 1987.

ADDENDUM

Copies of the following Sections of Utah Code Annotated, 1953, as amended:

Section 23-20-4

Section 76-2-101

23-20-4. Possession of illegally taken protected wildlife unlawful - Seizure - Possession as evidence of guilt - Taking or possession of big game, endangered wildlife, etc., a class A misdemeanor - Other illegal taking or possession a class B misdemeanor.

Possession of illegally taken protected wildlife is unlawful; and all protected wildlife, or parts of them, taken, held, shipped, or consigned for shipment, may be seized by the division of wildlife resources. Possession of any protected wildlife, or any parts of them, taken during the time or period within which the taking or possession of same is prohibited, shall be prima facie evidence of guilt.

Any person who has taken or has in his possession any species of big game, bear, cougar, or rare, threatened or endangered wildlife which have been illegally taken, is guilty of a class A misdemeanor. Any person who has any other wildlife illegally taken or possessed is guilty of a class B misdemeanor. 1979

76-2-101. Requirements of criminal conduct and criminal responsiblity.

No person is guilty of an offense unless his conduct is prohibited by law and:

(1) He acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or

(2) His acts constitute an offense involving strict liability.

These standards of criminal responsibility shall not apply to the violations set forth in Title 41, Chapter 6, unless specifically provided by law. 1983